

**Giving Oral Expression 'Free Rein':
Implications for Diversity of University Hate Speech Codes**

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This paper uses history, law, and First Amendment theory to examine the concepts of political correctness, free speech, and hate speech in a search for a solution of how best to deal with hate speech incidents that occur in the university campus community. The paper notes the American tendency toward tyranny of the majority as noted by Alexis de Tocqueville in the 1830s and then proceeds to examine the double-edged sword of free speech. By guaranteeing freedom of speech we promote the right to shout down ethnic and other minority groups; by providing penalties against those who use it to shout others down we make society less free. This paper suggests a different answer: promote more speech expressed in community meetings conducted in an atmosphere that is safe and encouraging for all to express their views.

Introduction

In America free speech has served the white male-controlled status quo for 200 years. At the same time it has given gains slowly to people of color, those with differing ethnic backgrounds, women, and those who are differently abled. Now society debates how to “manage” speech (often labeled Politically Correct or PC speech) even though speech originally was considered to be free, not manipulated.

The last several years have seen an intensification of a PC debate along with increased governmental action or threat of it—all of this having implications for diversity. Universities tried speech codes to punish “hate speech” in efforts to promote diversity (two thirds of the nation’s universities had them), but they may be falling into disfavor.¹ If their

demise comes, freedom to shout down those of different color or gender or ethnicity will reign supreme. Hate speech, thus, would seem to be a troublesome concept running counter to the aspirations of a nation considering itself a melting pot of different ethnicities and counter to a notion of freedom and equality for men and women of all races, classes, ages, and disabilities.

This paper examines this limited area of the implications for diversity by this struggle over how to handle hate speech on university campuses. It is important to have a conceptual context and keep the following questions in mind as we explore the problem:

Do unsavory repercussions result if society outlaws forms of expression of hatred against ethnic minorities? Are values of pluralism best achieved by suppression of intolerant views? Should freedom of expression for views we detest be disallowed? Are campus speech codes wise, or do they chill skeptical speech and the free exchange of ideas? Do solutions other than speech codes exist? Of course, there are a few absolute answers to such questions, but there is a substantial body of literature devoted to these topics which we do not have time to discuss.²

My own thinking thus far has only led me to this conclusion: For a university campus community free speech is certainly important, but if we automatically grovel before a sweeping interpretation of the First Amendment as a right to shout others down because we are FREE to speak in such a manner, we risk a society in which there is little room for the empowerment of people of all ethnicities and in effect make real freedom a myth.

PC — A Concept Tied to Hate Speech

We must begin by exploring a concept tangentially related to hate speech, and that is political correctness (PC). PC is a term suggesting that words, actions, and perhaps even ideas must conform to non-offensive or non-discriminatory norms (whatever they are). Regardless of its political ownership (or lack thereof) the very existence of PC fits squarely into any notion of cultural mainstreams and margins on university campuses. Some scholars credit its flourishing as arising from academics with progressive beliefs and actions that were labeled as politically correct. As such, this view says PC described an idealism that, at its worst, was exaggerated or silly and, at its best, is an ongoing impetus to make academic institutions more diverse, open, and egalitarian—an admirable trend.³

There is some irony in the notion that PC has been called by those who oppose diverse and egalitarian institutions “Facism of the Left” or “New Stalinism.” Even former President Bush, while certainly not supporting campus protest of his decision to start a war in the Persian Gulf, noted the adverse implications of PC for free speech in a

1991 graduation address at the University of Michigan.⁴

Critics of PC often tend to single out extreme interpretations and applications of the policies and then use them to discredit a wider range of actions. For example, PC critics widely used the incident of a student who was reprimanded at the University of Pennsylvania for expounding the virtues of the notion of individual rights because they had been used to oppress historically powerless groups.⁵

PC critics also often lump together distinct policies instead of treating them as separate. At least five policies have been identified, only one of which relates to outlawing sexist, racist, and other hateful speech.⁶ The heart of this paper stems from ramifications of this category.

There is also a paradox involving PC. It is important to note the danger and the quandary caused by PC in policies such as speech codes forbidding hate speech directed against less powerful races, ethnicities, or gender. This area is central to public discourse and is the foundation of civic intelligence necessary for self-governance.

These speech codes typically forbid direct fighting words, such as cursing into the face of an Asian and taunting her/him with degrading phrases. Some also forbid indirect hate speech such as dorm door posters. The paradox lies in the bind that such speech is disgusting and that it is regulated.

If we accept that the First Amendment protects above all else (in the words of Oliver Wendell Holmes) “freedom for the thought we hate,” such PC policies limit open discussion of inflammatory but nonetheless important, issues. In effect they herd us toward a society of nodding and bowing zombies similar to the one portrayed in Margaret Atwood’s novel, *The Handmaid’s Tale*.

As noted earlier, however, if we bow down before a sweeping interpretation of the First Amendment, a society emerges in which empowerment is denied to people of a different ethnicity, race, or gender. Any hope for equality kindled by a semi-PC attitude may be doused by such hateful tirades of “free” speech (presumably covering everything but individual, face-to-face confrontations, known in legal circles as “fighting words”).

The lack of clear thinking regarding PC can be seen in federal efforts to jump into the fray regarding hate speech codes. It was in 1992 that Larry Craig, a conservative U.S. senator from Idaho, headed the Congressional charge to enact federal legislation which would withhold funding from universities (virtually all get such funding) if they have behavior codes and harassment policies requiring PC speech and suppressing unpopular viewpoints.⁷

From one viewpoint Craig and other PC bashers exhibited the vision that PC will not ultimately serve the status quo. They believed that wide open and robust speech means no regulation of the time, place, or manner in which a point of view is delivered. Their view of free speech

is one of unlimited talkativeness. They want to preserve a right to shout down marginalized groups and keep them in a position of have-nots in regard to any “empowerment pie.”

But in the long run such tactics make the margins of society rough margins. Unhappy groups on the fringe do not always flow easily with the mainstream, especially if they believe they are unheard and perhaps invisible to the majority. It is under such circumstances that change can come abruptly—sometimes in a revolutionary manner—when those in the margins have had enough and won’t take it any more so to speak.

Hegemony and Rights

Next we should look broadly at what transpires in a so-called democratic community. Antonio Gramsci’s notion of hegemony can be applied to almost any society or nation—communities in their own right—not in the throes of revolution. While in prison in the 1920s, Gramsci sought reasons why revolution seldom materialized in the manner predicted by Karl Marx. Gramsci devised the concept of hegemony, which accounts for people’s willingness to conform to societal forces. He theorized that strong states rule almost exclusively through hegemonic means.⁸

Hegemony accounts for people’s reluctance either to rebel or to even make demands being willing instead to seek a comfortable niche within existing society. Such a powerful constraint of inherited ideology is a main key to the voluntary element of hegemony. Any lack of what is called “critical consciousness” on the part of citizens could be connected to a non-thinking—or underthinking—willingness to conform. In effect, hegemony accounts for a willingness to be content with the smallest sliver of the “empowerment pie.”⁹

To put it simply, people, even those with a mere sliver of the pie, long to be part of the community—almost at any cost—even though the community embodies negative qualities. Rather than struggle continually against those negative qualities, people conform willingly, and the prevailing power structure in the community need not exert force, for that willingness to conform, even under domination and discrimination, works in favor of the power structure. Hegemony is in place.

Indeed, the prevailing conceptions of rights do not wander far from hegemony. Stuart Scheingold noted a quarter century ago that we have a myth of rights, which includes a belief by citizens that American political institutions will respond to just claims and perceives rights as working in behalf of change but predominantly reinforcing the status quo.¹⁰ There is little wonder why it is a struggle to break free of domination when people participate in their own domination by being silent.

de Tocqueville: A Tie-in

For an understanding of the relationship of PC to hate speech and a campus community, it is important to note that PC can become a term standing for social non-movement. When PC works well, there is little movement from the margins or fringe of society to the mainstream. Those on the margins—and on campus that often means ethnic and other minorities—need assistance, a “safe haven,” in finding a more comfortable place in the community instead of remaining comfortably on the fringe.

But ensuring obedience and molding society are not new notions. In the 1830s Alexis de Tocqueville provided important thinking regarding such considerations in America that dovetail into an understanding of PC/hate speech. He called it the “absolute sovereignty of the majority.”¹¹

It seems that regardless of any division of property and power, the collective populace, in essence, have control, and the individual (or the few) cannot dispute this power of the majority, who, voluntarily and collectively, forge the path for their community.

The majority, de Tocqueville wrote, thus holds strong potential for tyranny and definitely exercises power over opinion. When the majority is undecided, public discussion is carried on, but as soon as the majority forms its opinion, no dissenting views are permitted, and opponents must unite with supporters on the issue in question, in part because a majority “has the right both of making and of executing the laws.”¹² This domination of opinion runs counter to any pure democratic practice and poses potential for tyranny by limiting any real diversity of opinion to which democratic states pay lip service.

de Tocqueville said he knew of no other country than America in which there was so “little independence of mind and real freedom of discussion” and noted the “formidable barriers around the liberty of opinion” raised by the majority as well as the penalties for those who went beyond them, for they were “in danger of an auto-da-fe” and “exposed to continued obloquy and persecution” until they yielded and were silent as if they felt “remorse for having spoken the truth.”¹³

The result of tyranny of the majority is a severe limit on any potential for diverse opinion. Those who violate the barriers are shunned or forced to search out another community with views more similar to their own. The pressure to conform is in the form of an unspoken power that both the marginalized person and the majority recognize. There is, in all this, of course, a strong relationship to many conditions under which people of diverse ethnicities live and interact on college campuses.

Legal and Regulatory Tie-ins for Campus Diversity

In the 1993 U. S. Supreme Court decision *R.A.V. v. St. Paul*,

justices voted 5-4 to throw out a St. Paul, Minnesota, ordinance banning displays of racial bias. The court said such government regulation went too far. The St. Paul ordinance, which had banned the display of a burning cross or a Nazi swastika or any writing or picture which “arouses the anger, alarm or resentment in others on the basis of race, color, creed, religion or gender,” violated the First amendment by punishing only certain forms of expressive conduct. The court said the First Amendment did not permit St. Paul to put special prohibitions on speakers expressing views on unfavorable topics.¹⁴

The high court has been quite supportive over the years in the need for a wide-ranging freedom of expression. Here are some examples:¹⁵

Justice William Brennan in *Texas v. Johnson* (the flag-burning case) wrote ‘If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.’ Brennan also wrote ‘The First Amendment does not guarantee that other concepts virtually sacred to our Nation as a whole—such as the principle that discrimination on the basis of race is odious and destructive—will go unquestioned in the marketplace of ideas.’

Justice Holmes wrote nearly a century ago ‘If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.’

In the case *New York Times v. Sullivan* in the mid-1960s Brennan wrote that ‘debate on public issues should be uninhibited, robust and wide-open, and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks.’

Similarly, Justice Harlan wrote in *Cohen v. California* (the “fuck the draft” decision) that ‘we cannot indulge in the facile assumption that one can forbid particular words without also running the substantial risk of suppressing ideas in the process.’

Spurred by political ramifications and PC concerns, a philosophy of limited free speech prompted university regulations against hate speech to be revisited or revised, and by 1993 more than 100 universities and colleges had passed regulations holding students to stricter standards of speech and press than exist in society as a whole (down from 1991 when it was estimated that two thirds of American universities had such codes),¹⁶

Here are some examples of how codes were revised:¹⁷

University of Wisconsin—(1992) repealed its speech code prohibiting students from uttering racist or sexist slurs, which had been adopted in 1989.

University of Texas, Austin—(1992) administrators sent their hate speech policy to general counsel for review.

University of Michigan—(1992) in light of *RAV v. City of St. Paul* (the cross-burning decision) general counsel said any action taken against students under its code were suspended while the university develops a new code in line with the Supreme Court's guidelines.

Stanford—(1992) a speech code was adopted restricting intentional, face-to-face racist, homophobic or sexual epithets.

University of Florida and New York University—codes took a moderate road and circumvented the free speech issue by regulating harassment, vandalism, trespassing, etc.

Wichita State University—faculty members voted down a proposal that students must take courses in race, gender and ethnicity.

University of Washington—faculty defeated a plan that would require PC sensitivity courses.

Drake University—faculty approved guidelines affirming academic freedom including a statement opposing any university regulation that would prohibit any form of speech or communication in the classroom, however offensive.

State of Washington—(June 1992) Senior Assistant Attorney General Richard M. Montecucco advised in the wake of the U. S. Supreme Court's *RAV* decision that 'colleges and universities proceed to address the problem [of malicious harassment] through educational programs and committees on diversity, and generally attempt to educate individuals about the concerns people of various ethnic origins and others have regarding statements which are offensive to a lot of people.'

The legal and university maneuvering to find middle ground suggests that colleges and universities cannot abridge the content of speech unless the speech falls into very exceptional categories: words that in-

cite violent behavior, really obscene speech, and possibly libel. These categories of speech are deemed to have such little redeeming social value and to be so undeserving of constitutional protection that the downside of forbidding them is outweighed by far greater social benefits and needed protection.

The Wisdom of Speech Codes

Are speech codes all that wise? Given the conceptual and legal complexities set forth, a comprehensive answer may not be found. Some think not. In noting that codes are designed to provide a “more tolerant, civilized, peaceful, and effective learning environment,” Judge Joseph Bellacosa asked, “But what of the backfire and chill on skeptical speech and the free exchange of ideas? Does ‘political correctness’—whatever that is—rear its ugly head and further complicate and misdirect the effort?”¹⁸

Bellacosa noted that in the short run, there is confusion of controversy and litigation concerning these codes, and “in the long run, these exertions on campuses across the country seem doomed by self-contradiction—the *head-on clash with the educational environment of free discourse and openness and re-examination of ideas, even detestable or very unsettling ones*” (emphasis added).¹⁹

“The central purpose of higher education,” Bellacosa asserted, “is to expose students to a diversity of new ideas and people; to teach critical examination of the opinions and perspectives of others rather than blind acceptance or rejection based on direction from on high.”²⁰

Bellacosa noted that “*people do not want conformity and, yet, they do want civility*” (emphasis added) with the key being to continue the search for “alternative means to achieve the good ends—tolerance, mutual respect and a healthy, effective environment conducive to learning and discourse—without sacrificing fundamental values.”²¹

Bellacosa also cited Yale President Benno Schmidt, who captured an important element of this side of the argument by noting that much expression that is free “may deserve our contempt” and that people will probably be moved to exercise their own freedom to “counter it or ignore it” but that universities cannot suppress or censor speech, “no matter how obnoxious in content, without violating their justification for existence.”²²

Schmidt’s view, according to Bellacosa, is that on some university campuses, “values of civility and community have been offered by some as paramount values of the university, even to the extent of superseding freedom of expression,” but that this view is “wrong in principle and, if extended, is disastrous to freedom of thought” in part because these codes are “typically enforced by faculty and students who commonly assert that vague notions of community are more important to the

academy than freedom of thought and expression.”²³ But in spite of such admonitions, it may be useful to think another way about freedoms of people of different ethnicities who are shouted down and harassed because somebody is free under the Constitution to attack in such a manner.

A Different View

A stance in favor only of free speech is an important one but may not be comprehensive if those on the margins of society remain fearful and unheard. Are there solutions other than free speech or speech codes? Is there middle ground? I say the answer is yes, and others have said yes as well.

To counter hate speech on university campuses, here are some academic remedies that have been suggested previously.²⁴

- 1) Use and enforce other codes governing student conduct.
- 2) Identify and promote profiles in tolerance and courage, such as teachers, and honor and exalt them so as to counter “lionizing of haters and disrupters.”
- 3) Create demonstrations, projects and discourses, compelled or mandatory mediation, and counseling.
- 4) Formulate counterculture courses to examine and critically challenge hate-filled or baiting speech that hurts and injures. In other words, use “good speech to counter bad speech.”
- 5) Promote incentives and disincentives that do not simultaneously produce disproportionately adverse consequences; use stigma and shunning and “speech chills.”
- 6) Use traditional tools and other mechanisms higher education institutions have designed to protect minorities’ interests during their education.
- 7) Enforce anti-bias policies and laws that already exist.
- 8) Strive for affirmative action in the hiring of professors and strive to achieve enrollment of a diverse student body.
- 9) Support multicultural events, minority student organizations, and the development of workshops and forums for moderated discussion of controversial ideas and subjects.

All these are solutions with potentially positive ramifications, and used alone, in groups, or en masse, would help resolve hate speech problems. But there is also another remedy (embedded in part in the ninth solution above) with deep ties to a notion of free speech, and I believe it may be a more healing approach. In fact, if used to complement some of those suggested just above, it has the potential to make

the university community into a safe haven for all ethnicities. The remedy is embodied in the belief that more speech is the solution to hate speech.

Hate speech codes do not achieve this. Placing limitations on the verbal expressions toward group hatred, as First Amendment philosopher Franklyn S. Haiman has noted, does not make those attitudes disappear. Instead, it forces them underground. In effect, suppression of hateful expressions makes society think it has solved a problem that actually persists. Those who are clever enough will evade the regulations and perhaps increase the persuasiveness of their arguments by phrasing them in less repugnant terms. This, in turn, makes censored material and its advocates into martyrs and increases public curiosity about their stances.²⁵

A watershed question might well be this: How many of a society's problems go on festering just because they are not discussed openly? It is no secret regarding human societies that only in a full and robust discussion where all ideas can be aired do people have a chance to achieve understanding. If views are forbidden or limited, those holding them are resentful and hold onto the views. They may move, as if in a de Tocquevillean scenario, to a different community, but the fallacies of the view are not challenged. And the hate remains.

If a remedy of more speech is to work, however, it must not be unregulated speech. Robust speech is best expressed in a forum which mirrors a town meeting that de Tocqueville might have found as he wandered through America in the 1830s. After all, democracy as we know it has evolved from such community meetings where differences were worked out. Differences, like bad wounds, cannot heal if they are wrapped but not cleansed. Community meetings that discuss all aspects of that which is hated allow the necessary cleansing that can promote the healing. And, if the discussion is to cleanse, it must be orderly and mostly rational. Thus, all views, including the hateful ones, must be allowed and even promoted.²⁶

This means that the community meeting again provides the guidance, as such meetings traditionally are "regulated" by a moderator or moderators who allow all views to be heard—but not all at once, for that would be chaos. The moderator(s) bear a special burden in making sure the community meeting does not result in a tyranny of the majority. This person cannot permit the meeting to become one in which only those shouting down the hateful speech are heard.

Instead, the moderator(s) must make certain all those with views, however hateful or marginal, express them, even if they do so meekly. The atmosphere, while likely to be spirited and emotional for some and at times fearful for others, must be made into a safe haven in its own right—so safe all will speak freely. In this way tyranny of the majority will be avoided.

Some of the elements of this approach can be found in a modified form in an incident at Arizona State University earlier this decade. The handling of the hate speech incident there gives a rough blueprint of how to handle many hate speech incidents in university campus communities.

At ASU, a student had taped to the outside of his dorm room a computer printout, "Work Application (Simplified for Minority Applicants)." It contained the usual stereotypes about Mexican Americans and African Americans. Three African American women living on the floor above saw the poster knocked on the door and persuaded a roommate of the culprit to take it down and allow them to make a copy. They informed the residence director, who notified a campus environmental team. But the poster, though hateful, was clearly permissible under the First Amendment, so instead of fighting a legal battle they would likely lose (and which would take time and not promote much understanding), those concerned called a meeting of dorm residents. In that community meeting, all, including those who felt the hate speech sting, were allowed to speak out. The campus newspaper reported on the meeting, and in spite of some sentiment to discipline the poster's owner, the head of the Student African American Coalition, a sophomore named Rossie Turman, called for a press conference and rally to voice concern—and one can presume raise consciousness regarding the issue.²⁷

Presumably the meeting had a moderator who allowed all views to be expressed, and, hopefully, all views were expressed. If the meeting were lengthy enough, the pettiness, falsity, and ignorance of the hateful views would become clear to those holding them, and understanding and learning (consciousness-raising) would occur. The answer does not lie in suppression of expressive hate speech, and it does not lie in having a society with rules that allow hateful speech to dominate. The answer lies in promoting more speech. Most likely, it must then be combined with reasonable regulation against hateful behavior—for example, from the solutions listed above.

Conclusion

This, on the whole, is my present stance. But my mind is not totally at rest regarding the issue. There is, after all, conformity—and tyranny of the majority—to consider, which easily can be promoted in a society driven by a mass media controlled by those with selfish interests rooted in profit and manipulation not in promoting diversity and equality.

So I keep searching for other alternatives because it seems unwise to give free expression total free rein. And it can be disastrous to outlaw all behavior that embodies expressive characteristics. The problem still exists. Wide-open, robust discussion may well help us arrive at the truth, and the truth may well set us free, but for ethnic minorities I sometimes wonder if it is worth waiting forever for freedom.

NOTES

¹Don Pember, *Mass Media Law*, 6th ed. (Dubuque, IA: Wm. C. Brown, 1993), 89.

²Of course, many others have explored the concepts examined in this paper. To explore this body of literature, I suggest that readers begin with the following sources: Beckwith, Francis J. and Michael E. Bauman, eds., *Politically Correct? Debating America's Cultural Standards* (Buffalo, NY: Prometheus Books, 1993); Berman, Paul, ed., *Debating P.C.: The Controversy over Political Correctness on College Campuses* (New York: Dell Publishing, 1992); Brownstein, Alan E., "Hate Speech at Public Universities: The Search for an Enforcement Model," *The Wayne Law Review Spring* 1991, 1451-68; Dworkin, Andrea, *Life and Death* (New York: The Free Press, 1997); MacKinnon, Catherine A., *Only Words* (Cambridge, MA: Harvard University Press, 1993); and Matsuda, Mari J., et.al., *Words that Wound: Critical Race Theory, Assaultive Speech and the First Amendment* (Boulder, CO: Westview Press, 1993).

³Nadine Strossen, "Political Correctness: Avoiding Extremism in the PC Controversy," *Visions of the First Amendment for a New Millennium* (Washington, DC: The Annenberg Washington Program, 1992): 16-17.

⁴Strossen, 14-17.

⁵Strossen, 18.

⁶Strossen, 18. Strossen credits this list to Gary Wills. The other four categories include 1) applying affirmative action in selecting students and faculty, 2) modifying a traditional "canon" of academic works with a more multicultural curriculum, 3) applying social pressure in a persuasive manner, and 4) promoting the use of softened terminology regarding such matters.

⁷See, for example, Matthew Ribinson, "A Fork in the Tongue: Proposed Bill is a Step in the Right Direction Towards Abolishing Restrictive Speech Codes," *The UCSD Guardian*, 6 February 1992, 4, 6.

⁸Antonio Gramsci, *Selections from the Prison Notebooks of Antonio Gramsci*, ed. Quintin Hoare, et.al. (London: Lawrence and Wishart, 1971). Gramsci also said that creating a new culture does not only mean "one's own individual 'original' discoveries." To him it also meant diffusion in a critical form of truths already discovered, their "socialization" as it were, and even making them a basis of vital action, an element of coordination and intellectual and moral order. (See Gramsci, *Prison Notebooks*, 325).

⁹Walter L. Adamson, *Hegemony and Revolution: A Study of Antonio Gramsci's Political and Cultural Theory* (Berkeley: University of California Press, 1980). Adamson says hegemony can be the consensual basis of an existing political system within civil society or it can refer to an overcoming of the economic-corporative, referring to the advance to a class consciousness.

¹⁰Stuart A. Scheingold, *The Politics of Rights: Lawyers, Public Policy and Political Change* (New Haven: Yale University Press, 1974).

¹¹Alexis de Tocqueville, *Democracy in America* (New York: Vintage Books, 1945), 264.

¹²de Tocqueville, 273.

¹³de Tocqueville, 273-4.

¹⁴*R.A.V. vs. St. Paul* 112 S. Ct. 2538 (1992).

¹⁵The exact citations of the following court cases can be found in Gerald Gunther, "Good Speech, Bad Speech: NO," *Stanford Lawyer*, September 1990, 7, 9, 41.

¹⁶Pember, 89.

¹⁷These examples were culled from a variety of sources and included in a Bureau of Faculty Research speech titled "Political Correctness and Hate Speech on the University Campus," by this author, Western Washington University, Fall 1993.

¹⁸Bellacosa.

¹⁹Bellacosa.

²⁰Bellacosa.

²¹Bellacosa.

²²Bellacosa.

²³Bellacosa.

²⁴For a discussion of the remedies below, see Joseph W. Bellacosa, "Regulation of Speech on Campus: Suitable to a University or Oxymoron?" *New York Law Journal*, 24 June 1992, 2. A sample list of the kinds of hate speech incidents including the following: Stanford (1988)—Black features were painted on a Beethoven poster. [Discipline—white student expelled from housing by administration]. Tufts University (1990)—A student poked fun at a friend wearing a bandanna by calling the friend "Hey, Aunt Jemima." A bystander took offense at what she perceived to be a racist remark. [Student was put on academic probation and found guilty of harassment.] Brown University (1991)—Douglas Hann celebrated his 21st birthday by getting drunk and yelling expletives against Jews, homosexuals and blacks in the quad (a year earlier he had been sentenced to attend a race relations class and get alcohol abuse counseling). [Disciplined for the second offense by being expelled.] Occidental College (1992)—A male who called a female student an insulting four-letter word for vagina. [Discipline—sentenced to work thirty days of community service.] University of Wisconsin-Milwaukee (1992)—Conservative radio personality Mark Belling was invited to speak but then was attacked by objects hurled by protesters and driven off the stage. [The local ACLU leader criticized the assault of free speech but rationalized the mob's behavior by saying students were justifiably frustrated—racism and homophobia led them to violate the First Amendment rights of others. Student newspapers, left and right, denounced the demonstrators.] Dallas Baptist University (1992)—An untenured assistant professor of sociology argued in a colloquium against certain tenets of contemporary feminist dogma. He presented evidence suggesting all known societies assign roles on the basis of gender and suggesting some of the differences between men and women originate in biology and genetics. [Discipline—His presentation caused a storm of controversy and charges were brought against him by the administration. He and a dean who refused to investigate were denied reappointment.] Harvard (1992)—Editors of the conservative magazine *Peninsula* put up a flier in April 1992 advertising a symposium on "Modernity and the Negro as a Paradigm of Sexual Liberation" and depicting a black woman doing a striptease before an audience of white men. It was captioned "...spade kicks, what other kicks are there?" [The Harvard-Radcliffe Black Student Association condemned the flier for fostering a climate of harassment at the institution.] University of Pennsylvania (1993)—Freshman Eden Jacobwitz shouted out the window of his dorm to women members of a black sorority who were whooping it up below. He said they were water buffalo and if they wanted to party, a zoo was nearby. [Discipline—asked to hold a racial sensitivity seminar in his dorm and have a harassment charge noted on his transcript (refused and went to trial—outcome unknown).]

²⁵Franklyn S. Haiman, "The Remedy is More Speech," *American Prospect* (Summer 1991), 30-35.

²⁶The notion of community meetings, sometimes called town meetings, is not new. For example, First Amendment Philosopher Alexander Meiklejohn was known for advocating such meetings regarding his belief of how self-government should work. See Alexander Meiklejohn, "The Rulers and the Ruled," *Free Speech and Its Relation to Self-Government* (New York: Harper & Bros., 1948), 1-27.

²⁷Kaurence R. Stains, "Speech Impediments," *Rolling Stone* August 1993, 45-6, 48-9, 79.

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